

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-1011

4-11-74

4/11

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

_____ X

UNITED STATES OF AMERICA, :

Docket #74-1011

- against - :

PATRICK RAYLL, :

Appellant-Defendant. :

_____ X

APPENDIX TO APPELLANT
PATRICK RAYLL'S BRIEF



H. ELLIOT WALES

ATTORNEY AT LAW

747 Third Avenue

New York City

PAGINATION AS IN ORIGINAL COPY

APPENDIX - TABLE OF CONTENTS

Docket Entries

A-D

Judgment - Rayll

1a

Indictment

2a

Colloquy re Schlam's letter

3a-10a

100

MINAL DOCKET

7302 244

710P869

JUDD, J.

TITLE OF CASE

THE UNITED STATES

vs.

THOMAS BUTTAUFUOCO,

JESSIE PEARSON,

ANTHONY POLITO and

PATRICK RAYLL

ATTORNEYS

For U.S.:

RAYLL

H. E. WALES

747-3rd Avenue, NYC10017

421-1993

For Defendant:

RAYLL

H. E. WALES

747-3rd Avenue, NYC10017

421-1993

le or receipt of stolen goods

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
ne, Buttafuoco	1,000 00	12-25-73	Notice of Appeal	5 -	
ne, Polito	2,500 00	1-7-74	Paid to Treas		5 -
arshal, Pearson	1,000 00	4-15-79	Notice of Appeal (No fee)		
orney,			Rayll		
ommissioner's Court,		12-28-78	Notice of Appeal (No fee)		
itnesses,			Pearson		
		1-7-74	Notice of Appeal (Rayll)	5 -	
		1-8-74	Paid to Treas		5 -

DATE	PROCEEDINGS
73	Before COSTANTINO, J.- Indictment filed.
6/73	Before ROSLING, J.- Case called- Defts present-Only deft RAYAL not prese but his atty is present-Bench Warrant ordered for RAYLL-Defts BUTTAUFUOCO PEARSON and POLITO arraigned and enter pleas of not guilty-Bail cont'd as to all defts-Case marked ready and passed-Motions to be made on statutory time.
7/73	Notice of Readiness for Trial filed.
-21-73	Magistrate's files 72 M 1774 and 73 M 393, and 73 M 401 inserted into Cr file.
26/73	Petition XX for Writ of Habeas Corpus Ad Prosequendum filed. (RAYLL)
26/73	By ROSLING, J.- Writ issued , ret. 3/30/73.
30/73	Notice of Appearance filed.
30/73	By ROSLING, J.- Order filed, appointing counsel.

DATE

3/30/73

4/3/73

4/9/73

4/11/73

5/4/73

5/4/73

8-3-73

8/8/73

8/8/73

9-17-73

9-24-73

9-25-

9/26/73

10/1/73

10/1/73

73CR 244

DATE	PROCEEDINGS
3/30/73	Before ROSLING, J.- Case called- Deft present and without counsel-Court court assigned H.E. WALES as counsel for deft RAYLL-Order appointing coun signed-Copies given to the atty-Deft arraigned and enters a plea of not g Statutory time for motions-Bail fixed at \$10,000.00 cash or surety-Case marked ready and passed.
4/3/73	Writ ret'd and filed. Executed. (BUTTAUFUOCO)
4/9/73	Notice of Motion for Discovery and inspection-Rule 16 FRCP filed, Notice Motion to suppress evidence illegally obtained-Rule 41, FRCP filed, Not of Motion for Bill of Particulars Rule 7 filed, all motions ret. 4/13/73
4/11/73	Affidavit of Service filed (for motions of 4/9/73) from LILLIAN KURTZER.
5/4/73	Before JUDD, J.- Case called-Deft PEARSON present w/o counsel-All other de not present-Order appointing counsel & signed-Pre-Trial held and concluded Case adj'd to 9/5/73 for Suppression-Hearing and to 9/10/73 for trial.
5/4/73	By JUDD, J.- Order appointing counsel filed. (for J. PEARSON)
8-3-73	Govts answers to Demands for Particulars and Discovery filed. (P. RAYLL)
8/8/73	Letter from chambers dated 8/3/73 from H. Elliot Wales, filed- re: P. RAYLL
8/8/73	By, JUDD, J.- Order filed reducing bail to \$5,000 surety bond (copies sent AUSA Schlam and counsel) Deft. RAYLL
9-17-73	Before Judd J - Case called - defts & counsels present - adj'd to 9-24-73 for trial.
9-24-73	Before Judd J - Case called - defts & counsels present - Wade Hearing begun - all motions to suppress argued - wade hearing concluded - Decision Reserved - all other suppression motions denied - trial ordered and Begun. Jurors selected and sworn - Govt opens - All defts open - 2nd Wade Hearing Begun - All Wade Hearing motions to suppress are denied - Trial continued to 9-25-73.
9-25-73	Before Judd J - Case called - defts & counsels present - trial resumed - Stipulation read into Record - Govt rests - defts motion to dismiss the Indictment - all motions denied - Trial cont'd to 9-26-73.
9/26/73	Before JUDD, J.- Case called- Defts and counsel present-Trial resumed-Jur #6 excused-Deft BUTTAUFUOCO rests-Deft POLITO rests-Deft PEARSON rests-Deft RAYLL rests-Govt opens on Rebuttal-Trial cont'd to 10/1/73
10/1/73	Magistrates file 73M1231 inserted into Criminal file 73CR244
10/1/73	Before JUDD, J.- Case called- Defts and counsel present- Trial resumed- Deft Pearson's motion to adj'd trial for 1 day in order to find a potent witness- Motion granted- Trial cont'd to 10/2/73

B

DATE	PROCEEDINGS	DATE
10-2-73	Before JUDD, J - Case called - defts & counsels present - Trial resumed - defts motions to dismiss and for Judgments of Acquittal - Motions denied - defts sum up - Govt sums up - deft RAYLL's motion for mistrial - motion denied - Juxdge charges Jury - Marshals sworn - alternate discharged - Jury retires to deliberate at 2:45 PM - Case adjd to Oct. 3, 1973.	12-28- 12-28- 12-28- 12-28-
10-3-73	Before JUDD, J - Case called - defts & counsels present - Trial resumed - Jury resumes deliberations at 9:30 am. Order of Sustenance signed - Jury returns at 5:00 PM and renders verdict of guilty as charged as to all defts - Jury discharged - Trial concluded - Defts motions to set aside verdict - Motions denied - Bail contd as to all defts - adjd without date for sentencing.	1-7-74 1-7-74 1-10-
10-3-73	By JUDD, J - Order of Sustenance filed.	1-16-
10-3-73	5 Stenographers transcripts filed (pgs 1 to 618)	
0/5/73	Memo To U.S. Marshal from Judge Judd and reply on back of memo filed re:Buttafuoco	
10-11-73	Voucher for compensation of counsel filed (RAYLL) & affidavit in support	
10-11-73	2 stenographers transcripts filed one dated Oct. 2 and one dated Oct. 3, 1973 (pgs 619 to 799)	etc
11-21-73	Voucher for expert services filed (RAYLL)	
12-28-73	Before JUDD, J.- Case called- Defts and counsels present- Deft POLITO sentenced to imprisonment for a period of 2½ years. The deft is fined \$2,500.00 and execution of sentence is stayed pending appeal Deft advised of his right to appeal- Bail conditions contd- Deft BUTTAUFUOCO sentenced to imprisonment for a period of 2 years- Deft to serve 6 months and execution of balance of sentence is suspended and the deft is placed on probation for a period of 2 years- deft is fined \$1,000.00 and execution of sentence is stayed pending appeal- deft advised of right to appeal- Bail conditions contd- Deft RAYLL sentenced to imprisonment for a period of 4 years pursuant to T-18 U.S.C. Sec. 4208(a)(1) with eligibility for parole after 1 year- deft contd on \$2,500.00 bail pending appeal- Clerk to file notice of appeal in forma pauperis on behalf of deft- Deft to post new bail bond by 1-2-74- Deft PEARSON sentenced to imprisonment for a period of 1 year deft to serve 60 days on 3 day weekends and balance of sentence is suspended and the deft is placed on probation for a period of 2 years deft is fined \$1,000.00 and execution of sentence is stayed pending	

[illegible]

Judgment

United States District Court

FILED

FOR THE
EASTERN DISTRICT OF NEW YORK

United States of America

v.

PATRICK RAYLL

No. 73 CR 244

On this 26th day of December, 1973 came the attorney for the government and the defendant appeared in person and with counsel, H. Elliott Wales, Esq.

It Is ADJUDGED that the defendant upon ~~examination~~ a verdict of guilty

has been convicted of the offense of violating T-18; U.S.C. Secs. 2315 & 2 in that in or about August 1972, the defendant, with others, wilfully and knowingly received and concealed a quantity of articles of a value of approximately \$110,000.00 which articles were moving as part of an interstate shipment of freight from Elizabeth, N.J. to Plainview, N.Y., knowing the same to have been stolen

as charged³

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is ADJUDGED that the defendant is guilty as charged and convicted.

It Is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 4 years pursuant to T-18 U.S.C. Sec. 4208(a)(1) with eligibility for parole after 1 year. The defendant is continued on \$2,500.00 bail pending appeal

~~It Is ADJUDGED that⁴~~

It Is ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Indictment

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MAR 8 1973

UNITED STATES OF AMERICA

- against -

THOMAS BUTTAPOCCO,
JESSIE WEAVER,
ANTHONY POLITO, and
FRANKIE BAYL.

INDICTMENT

Ch. 25.
(2, 19 U.S.C. 84315
and 843).

- defendant -

73 CR 24

Resolving

THE GRAND JURY CHARGES:

In or about August, 1972, in the Eastern

District of New York, the defendants:

THOMAS BUTTAPOCCO
JESSIE WEAVER
ANTHONY POLITO and
FRANKIE BAYL,

together with the Kirschners, not named as a defendant
herein, vitally and unlawfully received and concealed
a quantity of stolen Colgate-Toiletries articles, of a
value of approximately One Hundred and Ten Thousand
Dollars (\$110,000.00), which articles were acting as
a part of and constituted interstate commerce from
Elizabeth, New Jersey to Manhattan, New York, knowing
the same to have been stolen. (Title 18 United States
Code, Section 843 and Section 9).

A TRUE BILL.

FOR THE

UNITED STATES ATTORNEY

1 7 Kirschner - direct

2 Q And this was prior to your appearance before
3 the Grand Jury?

4 A Yes.

5 Q And that was in March of 1973?

6 A Yes, sir.

7 Q And at that time, I wrote a letter; is that
8 correct?

9 A Yes.

10 MR. WALES: Objection; he's leading
11 the witness.

12 THE COURT: It's all right.

13 Q And the substance of that letter --

14 THE COURT: If you have a letter -- Do
15 you have it?

16 MR. SCHLAM: Yes, I have the letter,
17 your Honor.

18 MR. WALES: I'm going to object to any
19 letter. It's hearsay, your Honor.

20 THE COURT: Well, let me look at it.
21 Government Exhibit 1 for identification, is that
22 right?

23 MR. WALES: Just one moment, please, your
24 Honor.

25 THE COURT: I'm not sure the letter is

8 Kirschner - direct

admissible. His response may be.

MR. SCHLAM: That's what I was getting at, your Honor.

MR. WALES: I'm going to object to it, your Honor.

THE COURT: All right. It will remain marked for identification.

THE CLERK: One-page letter marked as Government's Exhibit 1 for identification.

(So marked.)

BY MR. SCHLAM:

Q Mr. Kirschner, after I wrote the letter, when you were -- prior to your testifying before the Grand Jury, as a result of this letter, did you understand that you were to be prosecuted for the case that you had been arrested for?

MR. VERDIRAMO: Objection, your Honor. That's calling for state of mind.

THE COURT: No. Overruled. It's admissible here.

A No.

Q In other words, you believed that you had been granted immunity from the prosecution for the case involving the merchandise that the FBI seized from your warehouse on August 31?

1 9 Kirschner - direct

2 A Yes.

3 Q And what did you understand you would have to do
4 in order to receive the immunity?

5 A Tell the --

6 MR. CURRATO: Objection, if it please
7 the Court. This calls for a frame of his mind.
8 He's been granted immunity. Fine. That's in.
9 He can't go any further and tell us what was in
10 his mind at the particular time.

11 THE COURT: Let's come to the side bar
12 a minute.

13 (Whereupon, a side bar conference was
14 held.)

15 THE COURT: Wasn't there a grant of
16 immunity by a Judge?

17 MR. SCHLAM: No, your Honor. This was
18 an informal thing. In other words, we just
19 wrote a letter saying, if he would testify to
20 the facts of the case, that he would not be
21 prosecuted.

22 THE COURT: He testified on the basis
23 of this letter?

24 MR. SCHLAM: That's correct, your Honor.

25 THE COURT: Was he given a copy of it?

10

Kirschner - direct

MR. SCHLAM: Yes, he was.

MR. WALES: My objection is, he asks if he understood, and this sets up the answer, which was a self-serving answer. All I had to do is tell the truth.

THE COURT: I think under these circumstances, if he testified on the basis of the letter, and not on the basis of a consent order from the Court, or from Washington, the letter is admissible.

MR. WALES: It's hearsay. I can write all the letters in the world, your Honor. He writes a letter that the witness is truthful. I can write a letter saying that Pat Rayll is truthful.

THE COURT: You know that's different. I'll receive the letter.

MR. WALES: Your Honor, I have another objection, then.

MR. VERDIRAMO: The letter, your Honor, goes to the truthfulness of the statements.

MR. WALES: In the letter, the Government vouches for the truthfulness of this witness. It's signed by Peter Schlam under the name of

11

Kirschner - direct

Robert Morse. He says, I believe this witness to be truthful. The Government can't do that and introduce it in evidence. The Government's belief about a witness if absolutely immaterial.

MR. SCHLAM: Your Honor, I think we --

THE COURT: Let me see the letter, and maybe we ought to excise it.

MR. SCHLAM: This is the letter.

THE COURT: That's not vouching for the -- That's just a statement of what he agreed to.

Overruled.

MR. WALES: Mr. Schlam, your Honor --

(Whereupon, side bar was concluded.)

(continued on next page.)

Fls

8a

AM:GA 1
T3R2 PM

Kirschner - direct

2

THE COURT: All right. I've ruled at

3

the side bar that the letter will be received

4

in evidence, and Mr. Schlam may read it to the

5

jury.

6

MR. CURRATO: May the record show that

7

the defense counsel has objected to this letter

8

being put in evidence.

9

MR. WALES: We have no foundation of who

10

the author of the letter is, and we'd like to

11

cross-examine on that.

12

THE COURT: Overruled.

13

MR. SCHLAM: The letter is dated March 7,

14

1973. It's addressed: "To Whom It May Concern:

15

"On August 31, 1972, the FBI seized a large

16

quantity of stolen Colgate-Palmolive articles at

17

INK Sales Corporation, 41 Kane Drive, Plainview,

18

New York. Ira Kirschner is the President of the

19

corporation. He has agreed to testify truthfully

20

and completely concerning the persons and incidents

21

which constituted his involvement with the case.

22

We have agreed not to prosecute Kirschner for the

23

crimes arising from these events. The immunity

24

does not exclude immunity for prosecution for per-

25

jury, should Kirschner's testimony be untrue or

9a
Kirschner - direct

incomplete. Very truly yours, Robert A. Morse,
United States Attorney, by Peter R. Schlam,
Assistant U. S. Attorney."

MR. VERDIRAMO: If your Honor please,
I'd like to --

THE COURT: Yes.

MR. VERDIRAMO: I'd like to note for the
record an objection on the timeliness of this
letter going in at this time, for the following
reasons: Number one. There is no evidence
before this Court that the materials received
by Mr. Kirschner were stolen.

THE COURT: All right. Motion overruled.
Let's proceed, Mr. Schlam.

MR. WALES: May I object for the record?

THE COURT: Yes.

MR. WALES: There's no evidence that this
letter was ever written. There's no foundation
to that.

THE COURT: I have overruled that once
at the side bar.

MR. CURRATO: May I make one further
objection?

MR. WALES: It places the credibility of

Kirschner - direct

the United States Attorney --

THE COURT: Mr. Schlam, you may ask your next question.

Please be seated.

MR. CURRATO: Your Honor, may I --

THE COURT: Please be seated.

Mr. Schlam.

BY MR. SCHLAM:

Q Mr. Kirschner, you saw the letter that constitutes Government Exhibit 1 in evidence?

A Yes, sir.

Q And as a result of receiving this letter, did you do anything?

A Yes, sir.

Q What did you do?

A I agreed to testify and tell the whole story of how I got the merchandise, and how I got arrested.

Q Did you testify in the Grand Jury?

MR. WALES: I move to strike that answer, completely self-serving answer.

THE COURT: This is self-serving testimony.

Your objection is denied.

Q Did you testify in the Grand Jury?

A Yes.